



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 21, 2000

Larry P. Weinberg, General Counsel
Robert D. Lenhard, Associate General Counsel
American Federation of State,
County & Municipal Employees
1101 17th St., N.W.
Suite 1210
Washington, D.C. 20036

RE: MUR 4762
American Federation of State,
County & Municipal Employees
American Federation of State,
County & Municipal Employees-PEOPLE
and William Lucy, as treasurer

Dear Messrs. Weinberg and Lenhard:

On September 18, 2000, the Federal Election Commission accepted the signed conciliation agreement submitted on behalf of the above-cited respondents in settlement of violations of 2 U.S.C. §§ 441b(a), 434(b) and 441a(a)(2)(A), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter.

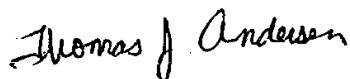
The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

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Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script that reads "Thomas J. Andersen".

Thomas J. Andersen
Attorney

Enclosure

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MUR 4762
American Federation of State, County)	
& Municipal Employees)	
American Federation of State, County)	
& Municipal Employees-PEOPLE)	
and William Lucy, as treasurer)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe the American Federation of State, County & Municipal Employees and the American Federation of State, County & Municipal Employees-PEOPLE and William Lucy, as treasurer ("Respondents"), violated 2 U.S.C. § 441b(a) of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Commission also found reason to believe that the American Federation of State, County & Municipal Employees-PEOPLE and William Lucy, as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(a)(2)(A).

NOW, THEREFORE, the Commission and Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Respondent American Federation of State, County & Municipal Employees ("AFSCME") is a labor organization as defined at 2 U.S.C. § 441b(b)(1) and a connected organization within the meaning of 2 U.S.C. § 431(7).

2. Respondent American Federation of State, County & Municipal Employees-PEOPLE ("AFSCME-PEOPLE") is AFSCME's separate segregated fund ("SSF") and a political committee within the meaning of 2 U.S.C. § 431(4). Respondent William Lucy is the treasurer of AFSCME-PEOPLE.

3. Pursuant to 2 U.S.C. § 441b(a), it is unlawful for any labor organization to make a contribution or expenditure in connection with any Federal election or for any political committee to knowingly accept such a contribution. A contribution or expenditure is defined as any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value, 2 U.S.C. § 441b(b)(2), but does not include funds used for the establishment, administration, and solicitation of contributions to an SSF to be utilized for political purposes by a corporation or labor organization. 2 U.S.C. § 441b(b)(2)(C). *See also* 11 C.F.R. § 114.1(a)(2)(iii). The corporation or labor organization may not, however, use the establishment, administration, and solicitation process as a means of exchanging treasury monies for voluntary contributions. 11 C.F.R. § 114.5(b).

4. Except for certain activities such as internal communications and nonpartisan activities, *see* 2 U.S.C. § 441b(b)(2)(A) and (B), the Act requires that a corporation or labor organization direct and finance its Federal political activities solely through the use of the voluntary contributions in its SSF, and not through the use of its general treasury funds.

5. The Commission's regulations limit how a corporation or labor organization may use its funds, facilities and personnel to raise contributions for a Federal candidate or to expressly advocate the election or defeat of a candidate to persons who are not members of the restricted class. *See generally* 11 C.F.R. § 114. For a labor organization such as AFSCME, the restricted class consists of its members and executive or administrative personnel, and their families. 11 C.F.R. § 114.1(j).

6. Although a labor organization may make registration and get-out-the-vote communications to the general public, such communications may not expressly advocate the election or defeat of any clearly identified candidates. 11 C.F.R. § 114.4(c)(2). Such public communications may only be made by a labor organization's SSF, using voluntary contributions. 11 C.F.R. § 114.5(i). While an SSF may pay in advance for Federal political activities undertaken by its connected organization, the connected organization may not initially distribute treasury funds subject to later reimbursement by its SSF. *See* Advisory Opinions 1984-24, 1984-37.

7. All contributions by a political committee, including contributions in-kind, must be reported according to the date made, pursuant to 2 U.S.C. § 434(b). The treasurer of a political committee is responsible for the accuracy of any information contained in reports filed with the Commission. 11 C.F.R. § 104.14(d).

8. The Act prohibits multicandidate committees from making contributions in excess of \$5,000 to any candidate and his or her authorized political committee with respect to any election for Federal office. 2 U.S.C. § 441a(a)(2)(A).

9. AFSCME-PEOPLE disclosed a total of \$15,995 in reimbursements to its connected organization, AFSCME, for in-kind contributions to federal candidates during the

1996 July, August and September monthly reporting periods, in the form of phone bank services provided by AFSCME in support of three Federal candidates.

10. The phone bank services consisted of telephone calls made by paid employees of AFSCME from a facility owned by AFSCME. The communications expressly advocated the election of Federal candidates to the general public.

11. Because the communications at issue expressly advocated the election of Federal candidates and were not limited to AFSCME's restricted class, they could not be paid for with the union's general treasury monies. Since AFSCME paid its employees on its premises to make the express advocacy phone calls, receiving payment only after the activity, the activity was impermissibly funded from AFSCME's general treasury monies.

12. AFSCME-PEOPLE also misreported the above disbursements according to the date that it reimbursed AFSCME rather than the date the in-kind contributions were made (i.e., when the services were provided on behalf of the candidates).

13. AFSCME-PEOPLE made two general election contributions to Cummings for Congress in 1996; a May 13, 1996 contribution in the maximum amount of \$5,000, and an October 15, 1996 contribution in the excessive amount of \$2,500.

V. 1. Respondent AFSCME made in-kind contributions in the form of express advocacy phone bank services provided on behalf of Federal candidates in 1996, in violation of 2 U.S.C. § 441b(a).

2. Respondents AFSCME-PEOPLE and William Lucy, as treasurer, accepted in-kind contributions in the form of express advocacy phone bank services provided on behalf of Federal candidates in 1996, in violation of 2 U.S.C. § 441b(a), and misreported such contributions, in violation of 2 U.S.C. § 434(b).

3. Respondents AFSCME-PEOPLE and William Lucy, as treasurer, made a \$2,500 excessive contribution to a Federal candidate in 1996, in violation of 2 U.S.C. § 441a(a)(2)(A).

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Six Thousand Five Hundred dollars (\$6,500), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.


IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:


Lawrence M. Noble
General Counsel

BY:


Lois G. Lerner
Associate General Counsel

9/20/00
Date

FOR THE RESPONDENTS:


(Name)
(Position) Assoc. Gen. Counsel

8/29/00
Date